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Letter dated 7 February 2006 from the Permanent Representative of Namibia to the United Nations addressed to the President of the Security Council

I have the honour to transmit the following letter, dated 3 February 2006, addressed to you by Mohamed Abdelaziz, President of the Saharawi Arab Democratic Republic (SADR) and Secretary-General of the Frente POLISARIO (see annex).

I should be grateful if you would arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Martin **Andjaba**
Ambassador and Permanent Representative

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Annex to the letter dated 7 February 2006 from the Permanent Representative of Namibia to the United Nations addressed to the President of the Security Council

The Government of the Kingdom of Morocco, in a recent letter addressed to the Secretary-General (S/2006/52), resorts once again to amalgam and incoherence to present this time a surprising interpretation of the terms and meaning of the ceasefire in force and of the nature of its presence in the Saharawi Territory, while taking the occasion to announce its pseudo-solution to the conflict of Western Sahara.

First, allow me to recall that the ceasefire was accepted by the two parties to the conflict, the Kingdom of Morocco and the Frente POLISARIO, as an integral part of the settlement plan, the objective of which is "to enable the Saharawi people to decide their future through a fair and free self-determination referendum, organized and supervised by the United Nations in cooperation with the Organization of African Unity (OAU)".

In May 1991, in a response to the formal request of the Secretary-General, both parties informed him of the number, armaments and exact geographical position of their respective military forces in the Territory. In this context, the Moroccan occupying forces were stationed inside and to the west of the defensive wall with which Morocco has divided the Territory into two parts. Outside the defensive wall and eastwards, the Saharawi forces were, and remain, positioned.

On 6 September 1991, following the coming into effect of the ceasefire, the deployment of the military observers of the United Nations Mission for the Referendum in Western Sahara (MINURSO) took place on this geographical basis, separating the two forces. This deployment continues to have practically the same characteristics. Contrary to what Morocco claims in its letter, there was and there is still a liberated area of the territory of Western Sahara and another one under the illegal occupation of Morocco. The military events that took place in Tifariti, which are referred to in Morocco's letter, were not a result of an "incursion" by Saharawi forces but a consequence of a large scale onslaught initiated by Morocco, on 27 August 1991 on the liberated region of Tifariti with the political objective of blocking the beginning of the implementation of the settlement plan, after it had obstructed the arrival of the first teams and equipment pertaining to MINURSO.

As you are aware, MINURSO, by virtue of the technical agreements signed with the two parties, is under conditions that enable it to continue to discharge its mission of monitoring the ceasefire as an inseparable element of the settlement plan and the peace plan, unless Morocco's letter signals the intention of breaking up the ceasefire, the political and military consequences of which would be Morocco's exclusive responsibility.

Second, the Frente POLISARIO, along with the entire international community, does not recognize that Morocco has any valid legal title to its presence in Western Sahara. The Madrid Accords of 14 November 1975, referred to in the letter, whereby the former colonial power blatantly renounced its responsibilities as an administering Power of the Territory, were an illegal transaction that does not alter the colonial nature of the problem.

Morocco is, moreover, fully aware of the content and scope of the verdict of the International Court of Justice, dated 16 October 1975, which denied any validity for its territorial claims over our country. It is also aware of the latter verdict requested by the Security Council from Hans Corel, in charge of the United Nations Office of Legal Affairs, dated 29 January 2002, in which he considered that Madrid Accords "did not transfer sovereignty over the territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred".

Being neither a sovereign power nor an administering power, the legal status of the Moroccan presence in Western Sahara can only be qualified as illegal. Exactly as it had been defined by the United Nations General Assembly in its resolution 34/37 (1970) it is a "military occupation" and, consequently, it cannot have any legal effects or consequences valid for third parties or for the international community.

To deny access to the occupied territory by foreign humanitarian and governmental delegations, as was the case of the delegation of the United Nations High Commissioner for Human Rights and the joint delegation of several Nordic countries, and the persistence in the policy of violating the human rights of the Saharawi population are facts that clearly highlight the brutal character of an illegal occupation.

Third, in view of the foregoing, the pseudo-solution announced in the letter constitutes a new "flight forward" that comes in the context of the continuous challenge exhibited by Morocco against the resolutions of the United Nations. The involvement of the international community, in all efforts aimed at the resolution of the conflict of Western Sahara, has been fundamentally justified by the fact that the United Nations is dealing with a decolonization question. As such, it must necessarily be resolved in conformity with the Charter of the United Nations and, in this context, with the resolutions and verdicts elaborated by its supreme bodies, which have unequivocally affirmed the inalienable right of the people of Western Sahara to decide their future in a democratic and peaceful way through a self-determination referendum.

It is in this legal framework that the Security Council approved, with the unanimity of its members, the settlement plan in its resolution 658 (1990); in resolution 690 (1991) the Council authorized the deployment of MINURSO in Western Sahara; it called for the implementation of the Houston Agreements in resolution 1133 (1997); and it gave its support for the peace plan for self-determination of the people of Western Sahara in its resolution 1495 (2003). In all these peace plans, the United Nations has advocated a referendum that enables the Saharawi people to choose their future, without restrictions or constraints with regard to the right to self-determination endorsed by the United Nations, by choosing among independence, autonomy or integration into the occupying Power.

Throughout this whole process, the Security Council and the Secretary-General have received sincere cooperation from the Frente POLISARIO with a view to facilitating the elaboration of the peace process and the great progress obtained in its implementation, following the signing of Houston Agreements.

Moreover, the Frente POLISARIO responded favourably to the Security Council request by releasing all Moroccan prisoners of war, a humanitarian and

peace gesture that has not been reciprocated by Morocco. Quite the contrary. Since May 2005 onwards, Morocco intensified its sadly well-known policies of repression that has led to disappearances, detaining and hurling of prisoners in medieval jails as well as physical liquidation of human rights activists, who are to be added to dozens of Saharawis who were recently found buried in common graves after having disappeared for years, a fact that has been recently recognized by Moroccan official organizations and non-governmental organizations.

It is now evident that the peace process has not been able to advance towards the objective for which it was elaborated. Morocco's failure to fulfil the commitments that it had made formally and solemnly before the Security Council, by virtue of its acceptance of both the settlement plan and the Houston Agreements, in whose elaboration it had participated actively, and its rejection of the peace plan presented by former Personal Envoy, James Baker, are undoubtedly the causes that have led to the current stalemate, and not a supposed unimplementability of the settlement plan.

We believe that the Security Council cannot resign itself to a dangerous stalemate, which, given the continuous violation of the human rights of the Saharawi population held hostage by an "occupying force", involves all the risks of degenerating into an uncontrollable situation.

The United Nations now is faced with an "illegal occupation" by a Member State to a Territory subject to an unaccomplished decolonization process, as were the cases of Namibia, East Timor and dozens of other nations in Africa, Latin America, the Caribbean and Asia.

In this context, the Frente POLISARIO would like once more to reiterate its very well-known position, in the sense that only the resumption of the referendum process, approved by the Security Council on the basis of principles and inalienable rights enshrined in the Charter, offers real possibilities for a just and lasting resolution of the conflict of Western Sahara.

Any other approach based on concepts or pseudo-solutions derived from Morocco's breach of international legality would imply the renunciation of the Charter, the legitimization of "a colonial fait accompli" and the establishment of force in international relations. It would suppose, in that case, the end of the peace process, the end of MINURSO and, consequently, the end of the rationale of the signing, the coming into effect and the maintenance of the current ceasefire.

Such approaches, prompted by the current Moroccan position as contained in the above-mentioned letter, cannot obtain the acceptance of the Frente POLISARIO as a fundamental party in the decolonization process of Western Sahara.

Mohamed **Abdelaziz**
President of the Saharawi Arab Democratic Republic
Secretary-General of the Frente POLISARIO